

KMC supports the proposal that the Commission staff could limit the scope of the briefs. After review of the pleadings and the joint stipulation, staff could issue a briefing schedule listing the issues to be briefed. Since the parties have already agreed to the issues that they believe are the "key" legal issues, KMC anticipates that the majority of the Commission's briefing orders will require the parties to brief those agreed upon key issues.

The Commission also seeks comment on the appropriate time frame for filing briefs and on whether Commission staff should be given maximum flexibility and control in setting those time tables. KMC agrees that the shortened deadlines under the Act require a revision in the current briefing schedule. Given that cases will be moving rapidly and there will be an increased burden on the parties to prepare their cases for rapid resolution, KMC believes that the Commission should establish set deadlines for filing briefs. KMC proposes that in cases in which there is no discovery, briefs should be filed concurrently within 30 days after the joint statement of facts and key legal issues is submitted. Oppositions to briefs should be filed 10 days after the initial briefs are filed. In cases in which there is discovery, briefs should be filed 30 days after discovery is completed with oppositions due 10 days thereafter. These time frames give the parties some guidance during the complaint process.

#### **XIV. Sanctions (NPRM Part II N, para. 84-85)**

KMC agrees with the Commission that it must be able to impose sanctions on parties for failure to comply with the complaint resolution procedures. The new statutory

deadlines place greater burdens on the parties and the Commission. Failure to comply with the rules can frustrate the entire formal complaint resolution process.

There, however, must be a balance between fairness and efficiency. The formal complaint resolution rules must serve two goals - efficient resolution of formal complaints within the statutory deadlines and fairness to the parties. With those two goals in mind, the Commission should err on the side of imposing monetary sanctions instead of summary dismissal of claims. Summary dismissal should be reserved for failure by complainants to set forth their allegations with specificity, failure by defendants to respond to the complaint, and/or failure by either party to certify that they engaged in good faith settlement negotiations.

**XV. Other Matters (NPRM Part II O, para. 86-87)**

In paragraph 86, the Commission tentatively concludes that under Section 271(d)(6)(B), the Commission must take some action within the 90-day deadline, but that action need not be final. KMC agrees with the Commission's conclusion. Other provisions of the Act specifically require "final" determinations within statutory deadlines. Section 271(d) does not contain the word "final". Therefore, it is reasonable to conclude that final action is not required by statute.

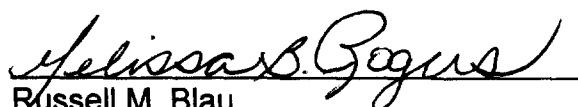
KMC encourages the Commission to adopt a rule that would require parties to discuss whether they are amenable to waiving or extending the 90-day complaint resolution deadline in 271(d) cases at the meet and confer, or if the Commission does not

adopt KMC' proposal requiring a meet and confer, the parties should be required to discuss the issue prior to the initial status conference. Thus, if the parties are able to agree to waiving or extending the deadline, a joint consent order can be entered at the initial status conference.

### **CONCLUSION**

In summary, KMC supports the Commission's efforts to fashion a formal complaint resolution procedure that is fair and fast. KMC requests that the Commission adopt rules that balance rapid resolution of complaints with an opportunity to fully prepare and present claims. In adopting rules, KMC urges the Commission to be sensitive to its role in providing an accessible and low-cost forum for resolution of complaints against carriers.

Respectfully submitted,



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## APPENDIX A

### § 1.724 (j)

*The answer shall include certification that each defendant discussed the possibility of settlement with the complainant.*

### §1.47(h)

Every carrier subject to the Communications Act of 1934, as amended, shall designate an agent in the District of Columbia, upon whom service of all notices, process, orders, decisions and requirements of the Commission may be made for and on behalf of said carrier in any proceeding pending before the Commission. *Such designation must be updated by the carrier within five (5) days of any change in the designated agent. Service on the designated agent of record constitutes effective service.* If a carrier fails to designate such an agent, service of any notice or other process in any proceeding before the Commission, or of any order, decision, or requirement of the Commission, may be made by posting such notice, process, order, requirement, or decision in the office of the secretary of the Commission.

### New §1.730

*Counsel shall meet and confer in person or by telephone after the defendant files the answer and before the first status conference. At the meeting, the parties shall discuss the following matters:*

- (1) *the need for additional discovery;*
- (2) *the need for depositions or filing of affidavits. If parties agree that depositions will be needed, they must discuss the number of depositions, identity of deponents and proposed deposition dates;*
- (3) *the timetable for completing discovery;*
- (4) *the need or desirability of involving a Commission appointed expert to resolve technical factual disputes;*
- (5) *whether settlement is a realistic possibility;*

- (6) *whether the case can be decided on the pleadings or whether briefing is necessary;*
- (7) *whether factual issues should be referred to an administrative law judge for resolution;*
- (8) *whether the parties are willing to utilize alternative dispute resolution in lieu of proceeding through formal complaint proceedings;*
- (9) *bifurcation of the liability and damages phases;*
- (10) *designation of documents and other information as confidential or proprietary;*
- (11) *joint stipulation of facts and key legal issues; and*
- (12) *in Section 271(d) cases, whether the parties agree to waive or extend the 90-day resolution deadline.*

*The parties must prepare and present at the first status conference (a) joint orders based on agreements reached at the meet and confer; (b) brief joint position statement on issues in dispute; and (3) joint stipulation of facts and key legal issues. The complainant shall draft the filings and present them to defendant for comment.*

**New § 1.729(f)**

*Prior to filing a motion to compel, the movant must contact the non-movant and attempt to resolve the dispute. If the non-movant refuses to engage in good faith discussion of the issues or fails to communicate with movant, the movant should file a motion to compel containing a certification stating the dates and times that it attempted to contact the non-movant. If, after good faith discussion of the issues, the parties cannot resolve the dispute, the movant must contact the Commission staff and arrange for a telephonic conference call with the all the parties. During that conference call, the parties present disputes to the Commission for resolution. If, after hearing both parties' positions, the Commission determines that legal briefing of the issues is necessary for resolution of the dispute, the Commission shall enter a briefing schedule.*

**§1.731A**

*If a party fails to obey an order to provide or permit discovery, including joint consent orders and scheduling orders, the Commission shall issue a show cause order requiring the party to comply with the earlier order. This show cause order shall give the party three (3) days to comply with the earlier order. The show cause order shall specify sanctions that shall automatically be imposed on the non-complying party if it fails to obey the order within three days.*